

here—is unconstitutionally vague in light of the Court’s prior decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015).

Moreover, in striking down §16(b), the *Dimaya* Court expressly rejected the very same arguments that the government has made to this Court with respect to § 924(c)(3)(B). First, *Dimaya* rejected the government’s attempt to distinguish § 16(b) from ACCA based on an alleged “temporal restriction.” Slip Op. at 16-19 (“[N]ot a single one of this Court’s ACCA decision turned on conduct that might occur after a crime’s commission . . . Every offense that could have fallen within ACCA’s residual clause might equally fall within § 16(b).”); compare with Dkt. No. 437 (“Govt. Opp.”) at 6-9. Second, the Court rejected the government’s claim that § 16(b)’s risk-of-physical-force standard is materially narrower than ACCA’s risk-of-physical-injury standard. Slip Op. at 19-20; compare with Govt. Opp. at 8-9. Third, *Dimaya* rejected the government’s attempt to distinguish ACCA based on its list of exemplar crimes that preceded its residual clause. Slip Op. at 20-21 (“To say that ACCA’s listed crimes failed to resolve the residual clause’s vagueness is hardly to say they caused the problem. . . . *Johnson* found the residual clause’s vagueness to reside in just ‘two’ of its features: the ordinary-case requirement and a fuzzy risk standard.”) (citation omitted); compare with Govt. Opp. at 4-5. Finally, the Court was unmoved by the government’s assertion that § 16(b) had not produced as many failed attempts at judicial construction as ACCA had. Slip Op. at 21-24 (“The Government would condemn us to repeat the past—to rerun the old ACCA tape, as though we remembered nothing from its first showing. . . . We abandoned that lunatic practice in *Johnson* and see no reason to start it again.”) (citations omitted); compare with Govt. Opp. at 9-10. Accordingly, the defense’s position is that because § 16(b) and § 924(c)(3)(B) are functionally identical, *see, e.g., In re*

Hubbard, 825 F.3d 225, 230 n.3 (4th Cir. 2016), *Dimaya* thereby resolves the pending motion in Al-Timimi's favor.

Yesterday, the defense contacted the government, seeking its position on the pending acquittal motion in light of the Supreme Court's new decision. The defense also asked the government if its positions have changed on any of the various issues at the center of the current evidentiary remand before this Court—including the disclosure of the "Squad IT-3" document and the large number of related files referenced herein in relation to Dr. Al-Timimi.

The government advised that it is in the process of obtaining guidance from the Justice Department. Once the government confers regarding its current position, the defense will renew its motion for acquittal, and also its pending evidentiary motions pursuant to the Fourth Circuit's remand order. The defense believes that a hearing on these motions would be beneficial to the parties and the Court. Of course, the defense is also prepared for a status hearing in the interim if the Court believes it would be constructive.

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Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that on April 18, 2018, I will file the foregoing document on the CM/ECF system (after a review by this Court's designated Classified Information Security Officer), which will then serve it by NES electronic notification upon all counsel of record, including:

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